

Message Text

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ACTION EB-08

INFO OCT-01 IO-14 ISO-00 AF-10 ARA-14 EA-12 EUR-12
NEA-10 L-03 FRB-01 OMB-01 ITC-01 SP-02 ICA-20
AGRE-00 AID-05 CIAE-00 COME-00 INR-10 LAB-04
NSAE-00 OIC-02 SIL-01 STR-07 TRSE-00 CEA-01 SS-15
/154 W

-----068395 181025Z /20

R 180911Z JUL 78

FM USMISSION GENEVA

TO SECSTATE WASHDC 2209

INFO USMISSION USUN NEW YORK

UNCLAS SECTION 01 OF 02 GENEVA 11007

E.O. 11652: N/A

TAGS: UNCTAD, ETRD

SUBJECT: UNCTAD - RESTRICTIVE BUSINESS PRACTICES

1. AD HOC IGE HAS MADE SUBSTANTIAL PROGRESS IN DEVELOPING RECOMMENDATIONS FOR GOVERNMENTS IN SECTIONS E-F OF PRINCIPLES AND RULES AND HAS DEVELOPED RECOMMENDATIONS FOR TECHNICAL ASSISTANCE IN SECTION G. SOME BRACKETS REMAIN IN AGREED TEXT. NEW AGREED TEXT FOLLOWS.

SECTIONS E AND F

2. STATES SHOULD BASE THEIR LEGISLATION PRIMARILY ON THE PRINCIPLE OF ELIMINATING OR EFFECTIVELY DEALING WITH ACTS OR BEHAVIOUR OF ENTERPRISES WHICH, THROUGH AN ABUSE OR ACQUISITION AND ABUSE OF A DOMINANT POSITION OF MARKET POWER, LIMIT ACCESS TO MARKETS OR OTHERWISE UNDULY RESTRAIN COMPETITION, HAVING OR BEING LIKELY TO HAVE ADVERSE EFFECTS ON THEIR TRADE OR ECONOMIC DEVELOPMENT, OR WHICH THROUGH FORMAL, INFORMAL, WRITTEN OR UNWRITTEN AGREEMENTS OR ARRANGEMENTS AMONG ENTERPRISES HAVE THE SAME EFFECTS.

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3. STATES IN THEIR CONTROL OF RESTRICTIVE BUSINESS PRACTICES SHOULD ENSURE TREATMENT OF ENTERPRISES WHICH IS FAIR, EQUITABLE, (NON-DISCRIMINATORY) AND IN ACCORDANCE WITH ESTABLISHED PROCEDURES OF LAW. THE LAWS AND REGULATIONS SHOULD BE PUBLICLY AND READILY AVAILABLE.

4. WHERE, FOR THE PURPOSES OF THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, A STATE OBTAINS INFORMATION FROM ENTERPRISES CONTAINING LEGITIMATE BUSINESS SECRETS, IT SHOULD ACCORD SUCH INFORMATION REASONABLE SAFEGUARDS NORMALLY APPLICABLE IN THIS FIELD, PARTICULARLY TO PROTECT ITS CONFIDENTIALITY.

5. STATES (, PARTICULARLY OF DEVELOPED COUNTRIES,) SHOULD TAKE MEASURES TO PREVENT THEIR LEGISLATION OR ADMINISTRATIVE PROCEDURES FROM FOSTERING THE PARTICIPATION OF ENTERPRISES IN (INTERNATIONAL) (INTERNATIONAL AND NATIONAL) CARTELS WHICH LEADS TO OR STRENGTHENS A DOMINANT POSITION F MARKET POWER HAVING OR LIKELY TO HAVE ADVERSE EFFECTS ON INTERNATIONAL TRADE, PARTICULARLY THAT OF DEVELOPING COUNTRIES, AND ON THE ECONOMIC DEVELOPMENT OF THESE COUNTRIES.

6. STATES SHOULD INSTITUTE OR IMPROVE PROCEDURES FOR OBTAINING INFORMATION FROM ENTERPRISES, (INCLUDING TRANSNATIONAL CORPORATIONS), NECESSARY FOR THEIR EFFECTIVE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, INCLUDING IN THIS RESPECT DETAILS OF RESTRICTIVE AGREEMENTS, UNDERSTANDINGS AND OTHER ARRANGEMENTS.

7. STATES SHOULD ESTABLISH APPROPRIATE MECHANISMS AT THE REGIONAL AND SUB-REGIONAL LEVELS TO PROMOTE EXCHANGE OF INFORMATION ON RESTRICTIVE BUSINESS PRACTICES AND ON THE UNCLASSIFIED

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APPLICATION OF NATIONAL LAWS AND POLICIES IN THIS AREA, AND TO ASSIST EACH OTHER TO THEIR MUTUAL ADVANTAGE REGARDING CONTROL OF RESTRICTIVE BUSINESS PRACTICES AT THE REGIONAL AND SUB-REGIONAL LEVELS.

8. STATES WITH GREATER EXPERTISE IN THE OPERATION OF SYSTEMS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES SHOULD, ON REQUEST, SHARE THEIR EXPERIENCE WITH, OR OTHERWISE PROVIDE TECHNICAL ASSISTANCE TO, OTHER STATES WISHING TO DEVELOP OR IMPROVE SUCH SYSTEMS.

9. STATES SHOULD, ON REQUEST, DR MAY ON THEIR OWN INITIATIVE, (AND/OR AT THEIR OWN INITIATIVE) SUPPLY TO OTHER STATES, PARTICULARLY OF DEVELOPING COUNTRIES, PUBLICLY AVAILABLE INFORMATION, AND, TO THE EXTENT CONSISTENT WITH THEIR LAWS AND ESTABLISHED PUBLIC POLICY, OTHER INFORMATION, NECESSARY TO THE RECEIVING (INTERESTED) STATE FOR ITS EFFECTIVE CONTROL OF RESTRICTIVE BUSINESS PRACTICES.(BRACKETS BELONG TO GROUP D.)

SECTION G

(RECOMMENDATIONS FOR) INTERNATIONAL MEASURES

10. (STATES AGREE THAT) COLLABORATION AT THE INTERNATIONAL LEVEL SHOULD AIM AT ELIMINATING OR EFFECTIVELY DEALING WITH RESTRICTIVE BUSINESS PRACTICES INCLUDING THOSE OF TRANSNATIONAL CORPORATIONS, THROUGH STRENGTHENING AND IMPROVING CONTROLS OVER RESTRICTIVE BUSINESS PRACTICES ADVERSELY AFFECTING INTERNATIONAL TRADE, PARTICULARLY THAT OF DEVELOPING COUNTRIES, AND THE ECONOMIC DEVELOPMENT OF THESE COUNTRIES. IN THIS REGARD, ACTION SHOULD INCLUDE:

(A) WORK AIMED AT ACHIEVING COMMON APPROACHES IN NATIONAL POLICIES RELATING TO RESTRICTIVE BUSINESS PRACTICES

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SP-02 ICA-20 AGRE-00 AID-05 CIAE-00 COME-00
INR-10 LAB-04 NSAE-00 OIC-02 SIL-01 STR-07
TRSE-00 CEA-01 SS-15 AF-10 ARA-14 EA-12 EUR-12
NEA-10 /154 W

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(TAKING DUE ACCOUNT OF THE PRINCIPLES AND RULES)-

11. UNCTAD SECRETARIAT AND G-77 ARE PRESSING TO COMPLETE PRINCIPLES AND RULES WITH SOME BRACKETS AT THIS MEETING FOR SUBMISSION TO TDB IN AUGUST, WITH VIEW TO CONVENING NEGOTIATING CONFERENCE AT POLITICAL LEVEL ASAP. US DEL IS COOPERATING IN ATTEMPT TO COMPLETE AGREED PRINCIPLES AND RULES BUT AS INSTRUCTED WILL RESERVE ON QUESTION OF CONFERENCE. AT A MINIMUM, A NUMBER OF SIGNIFICANT ISSUES WILL DOUBTLESS REMAIN IN BRACKETS.

12. SECRETARIAT HAS DISTRIBUTED LENGTHY PROPOSAL FOR A MODEL LAW, WHICH WILL NOT BE DISCUSSED AT THIS MEETING.
VANDEN HEUVEL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE, STANDARDS, RESOLUTIONS, BUSINESS FIRMS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA11007
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780294-0428
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780749/aaaabpeh.tel
Line Count: 170
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 97d4f071-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1975022
Secure: OPEN
Status: NATIVE
Subject: UNCTAD - RESTRICTIVE BUSINESS PRACTICES
TAGS: ETRD, SZ, UNCTAD
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/97d4f071-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014